IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

WP(C).No. 26746 of 2006(H)

OS.187/2001 of PRL.M.C., KOZHIKODE-II

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PETITIONER:

CHALIL CHIRUKANDAN, AGED 72,
S/O. RAMUTTY, CHALIL HOUSE,
OLAVANNA AMSOM, IRINGALLUR DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.E.NARAYANAN

RESPONDENTS:

1. VASU, AGED 60 YEARS, S/O. AYYAPPAN,
   CHALIL HOUSE, OLAVANNA AMSOM,
   IRINGALLUR DESOM, KOZHIKODE TALUK.

2. CHALIL SULOCHANA, AGED 54 YEARS,
   D/O.UNNEERIKKUTTY, OWN AFFAIRS, DO. DO.

3. CHALIL RADHA, AGED 49 YEARS,
   D/O. UNNEERIKKUTTY, DO. DO.

BY ADV. SRI.K.A.SALIL NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 26746/06

PETITIONER'S EXHIBITS:

EXT. P1	**TRUE COPY OF THE PLAINT DT. 15.3.01 IN OS 187/01 ON THE FILE OF PRINCIPAL MUNSIFF COURT II, KOZHIKODE**
EXT. P2	**TRUE COPY OF THE WRITTEN STATEMENT IN OS 187/01 DO. DO.**
EXT. P3	**TRUE COPY OF THE APPLICATION IA 4127/03 DT. 4.9.03 DO. DO.**
EXT. P4	**TRUE COPY OF THE COUNTER FILED BY THE RESPONDENT IN EXT. P3 APPLICATION**
EXT. P5	**TRUE COPY OF THE ORDER DT. 12.9.06 ON IA 4127/03 IN OS 187/01 ON THE FILE OF THE PRINCIPAL MUNSIFF II, KOZHIKODE**
EXT. P6	**TRUE COPY OF THE JUDGMENT DT. 20.7.96 IN OS 1083/91 ON THE FILE OF THE MUNSIFF COURT II (P) KOZHIKODE**

/TRUE COPY/

K.P. Balachandran, J.

W.P.(C)No. 26746 of 2006 H

JUDGMENT

The petitioner is the plaintiff in O.S. No.187/01 on the file of the Principal Munsiff's Court-II, Kozhikode. He filed I.A.No.4127/03 in the said suit for amendment of the plaint, incorporating prayer for fixation of boundaries. The said application was dismissed by the court below vide Exhibit P5 order on the ground that the prayer for fixation of boundaries is barred by res judicata in view of dismissal of O.S.No.1083/91, filed by the petitioner as against respondents 2 and 3.

2. Assailing the order of the court below, it is vehemently contended before me by the learned counsel for the petitioner that though it is true that items 1 and 2 properties in the present suit are items 2 and 3 properties in O.S.1083/91, the

issues decided in the said suit are not in relation to fixation of boundaries of items 2 and 3 properties therein and therefore, dismissal of the said suit will not operate as res judicata in the present suit and therefore, dismissal of amendment application was improper. The narration of the plaint averments in O.S.No.1083/91, as seen from Exhibit P6 judgment, is that the suit is filed for declaration of the boundaries of all the four items of scheduled properties in the plaint in that suit, demarcating the boundaries by issuance of a commission. It was the said suit that was dismissed vide Exhibit P6 judgment.

3. Having filed such a suit and suffered dismissal, it does not lie in the mouth of the petitioner to contend that issue regarding putting up of boundaries had not been raised in the earlier suit. If at all proper issues had not been raised in that suit, it was upto him to see that proper issues are raised by pointing out the mistake to

the court or by filing proper petition for recasting the issues. That not having been done and the petitioner having suffered dismissal of the suit vide Exhibit P6 judgment, which, it is submitted, has become final, the finding of the court below that the prayer sought for to be incorporated vide I.A.No.4127/03, if at all allowed, the suit will be barred by res judicata and therefore, the prayer to amend the plaint on the lines prayed for is not allowable, cannot be faulted. All the same, it is further vehemently contended by the counsel for the petitioner that the court cannot refuse to allow the amendment for the reason that on allowing such amendment that prayer would render the suit barred by resjudicata in view of the judgment and decree passed in the earlier suit filed by the petitioner. I see no merit in the contention advanced, when, even on the admitted facts, Exhibit P6 judgment, which has become final, is to operate as res judicata in the

present suit as in the earlier suit also declaration of boundaries by demarcating the same has been prayed for.

This writ petition, in the circumstances, is devoid of merit and is dismissed.

1st March, 2007 (K.P.Balachandran, Judge)

tkv